88-251

No.

FILED
AUG 11 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

---

HUE KIM SIDMAN,

Petitioner,

V.

SUPREME COURT OF FLORIDA,
THE FLORIDA BAR,
JUDICIAL CIRCUIT
GRIEVANCE COMMITTEE 17H,
and
MITCHELL B. LUBER,

Respondents.

---

# PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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WALTER F. WESSENDORF, JR.
P.O. Box 15846
Crystal City Station
Arlington, Virginia 22215
(703) 892-0110

Attorney for Petitioner

## QUESTION PRESENTED FOR REVIEW

Did the Respondent Supreme Court of Florida violate the Petitioner's Fourteenth Amendment rights in summarily denying without opinion Petitioner's motion for leave to intervene, on the grounds that her federal constitutional due process rights were denied and were being denied her in the grievance proceeding against the Respondent Mitchell B. Luber, for a show cause order directed to the Respondent The Florida Bar and to the Respondent Judicial Circuit Grievance Committee 17H (hereinafter the "Committee") to show cause why: (a) the Committee's investigating member should not be removed for misconduct and partiality in favor of the Respondent Luber; (b) the Committee should not be compelled to conduct the requisite investigation of the Petitioner's grievance complaints against the Respondent

Luber; (c) why the Committee should not be compelled to schedule another meeting with the Petitioner and to provide her with the assistance of a Vietnamese interpreter for reason of her extreme difficulty in understanding the English language and her extreme difficulty in expressing herself in the English language and making herself understood in the English language; and where the undenied allegations of Petitioner's said motion for leave to intervene amply set forth: (a) the misconduct and partiality of the Committee's investigating member in favor of the Respondent Luber, the personal prejudice of the Committee's investigating member against the Petitioner, and the Rules Regulating the Florida Bar (hereinafter the "Rules") adopted by the Supreme Court of Florida expressly provide that no member of a grievance committee shall perform any

grievance committee function whatsoever when such offending committee member is prejudiced or biased toward either the complaining party or the respondent lawyer; (b) the Committee did not conduct any semblance of the requisite investigation, that the Committee engaged in paper shuffling, that, by its own admission, the Committee did not have the complete file, and the Rules expressly mandate such requisite investigation be conducted; (c) although the Committee invited the personal participation of the Petitioner in the grievance matter, although the Committee was on prior written notice that Petitioner is of Vietnamese descent and her English is poor and that she has a hard time understanding the legal process and although the Committee through its investigating member's own personal and direct observations of the Petitioner by means of

the incoherent, groping and confusing questions in broken English the Petitioner asked of the Committee's said investigating member, the non-responsive, incoherent, groping and confusing answers in broken English the Petitioner gave to the Committee's investigating member, all of which demonstrated and confirmed to the Committee's investigating member that Petitioner was in dire need of the assistance of a Vietnamese interpreter, the Committee still did not schedule another meeting, as requested, with the Petitioner and provide the assistance of a Vietnamese interpreter?

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No.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

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HUE KIM SIDMAN,

Petitioner,

V.

SUPREME COURT OF FLORIDA,
THE FLORIDA BAR,
JUDICIAL CIRCUIT
GRIEVANCE COMMITTEE 17H,
and
MITCHELL B. LUBER,

Respondents.

---

# PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Petitioner, Hue Kim Sidman, respectfully prays that this Court grant a writ of certiorari to review the order of the Supreme Court of Florida, entered June 9, 1988, denying, without opinion, the Petitioner's June 6, 1988 motion for leave to intervene.

## JURISDICTION

The order of the Supreme Court of Florida was entered on June 9, 1988. This petition for certiorari is filed within 90 days of that date. The Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

## CONSTITUTIONAL PROVISION INVOLVED

FOURTEENTH AMENDMENT, SECTION 1, UNITED STATES CONSTITUTION: "]N]or shall any state deprive any person of life, liberty, or property, without due process of law ...".

## STATEMENT OF THE CASE

Petitioner was born in Vietnam's Mekong Delta. Her Vietnamese culture and strict Roman Catholic upbringing rendered unable to cope with the American culture coupled with the legal problems she was confronted with, exacerbated and compounded by her lack of knowledge of the English language to the degree that

she still has extreme difficulty in communicating in the English language, as well as extreme difficulty in understanding English, let alone legalese: all of which rendered her non sui juris, comparatively speaking.

Mitchell B. Luber, Esq. represented her in the divorce matter, styled Sidman v. Sidman, Case No. 84-25641 CT, in the 17th Judicial Circuit Court (Tedder, J.) in Broward County, Florida.

Inclusive of her grievance charges she filed against Mr. Luber with The Florida Bar are her allegations that Mr. Luber propositioned her; that Mr. Luber paid a visit to her residence without prior permission at 11:30 PM; that Mr. Luber coached her how to lie before Judge Tedder; that Mr. Luber had her sign a complex retainer agreement which she told Mr. Luber she did not understand and that Mr. Luber back-dated one year; that

Mr. Luber violated the attorney-client privilege by divulging confidential communications; that Mr. Luber kited his bills for legal services, inclusive of which were his time-charges for legal services of 18½ hours one day and 17 hours another; that Mr. Luber knowingly perpetrated massive fraud and deceit upon Judge Tedder's trial court; that Mr. Luber perpetrated massive fraud and deceit upon her during his representation; that Mr. Luber attempted to have her turn over to him gold and jewelry worth $80,000, real property worth $400,000, her automobile worth $12,000, her Boston Whaler worth $17,000 and her travel tickets worth $4,000. She voluntarily submitted to a polygraph examination administered by an independent, experienced veteran police polygraph examiner in the State of Virginia in connection with the fraud and deceit she alleged

Mr. Luber had perpetrated upon Judge Tedder's trial court and submitted the polygraph examination report to The Florida Bar. She agreed to be sworn under oath under penalties of perjury and to submit to polygraph examination administered by any, independent, experienced police polygraph examiner selected and designated by The Florida Bar with respect to any and all aspects of her grievance complaint against Mr, Luber with Mr. Luber's own grievance counsel being permitted to cross-examine her during her polygraph examination and to be bound by the results of the polygraph examiner's report.

The attorney who had represented Petitioner in her divorce matter before Mr. Luber had written The Florida Bar informing it:

> "Hue Kim Sidman is of Vietnamese descent. Her English is poor and it seemed to me she had a hard time

understanding the legal process.".

At the meeting held at the request of the jurisdictional Judicial Circuit Grievance Committee 17H (hereinafter the "Committee") of The Florida Bar with the Committee's investigating member Diane Marger on May 26, 1988, Ms. Sidman had extreme difficulty in communicating with and understanding Ms. Marger for the reason that Ms. Sidman spoke in broken English and was unable to communicate in the English language with Ms. Marger, Ms. Sidman did not understand Ms. Marger's English, the questions Ms. Sidman asked of Ms. Marger in broken English were incoherent, groping and confusing, Ms. Sidman gave non-responsive, incoherent, groping and confusing answers in broken English to Ms. Marger's questions. In addition to which, Ms. Marger expressed to Ms. Sidman the disinterest on the part of Ms. Marger in going into

the alleged charges of professional misconduct against Mr. Luber, as set forth hereinabove in the third full paragraph under the STATEMENT OF THE CASE herein. Ms. Marger addressed personal and uncalled for remarks to Ms. Sidman about Ms. Sidman's being a beautiful woman. Ms. Marger made a number of comments to Ms. Sidman which clearly indicated and reflected Ms. Marger's partiality in favor of Mr. Luber and Ms. Marger's predisposition to issue Ms. Marger's investigatory report to the Committee in favor of Mr. Luber. Further, Ms. Marger made disparaging remarks about the circuit court judges of Broward County by stating to Ms. Sidman that Ms. Sidman was fortunate in having had Judge Tedder as the trial judge because a younger Broward County circuit court judge would not have been as generous with Ms. Sidman's divorce settlement because Ms.

Sidman could have easily gotten another husband because of Ms. Sidman's beauty.

It was Ms. Marger's duty, as the Committee's invesigating member, to conduct the requisite thorough investigation in this grievance matter. It took Ms. Sidman's attorney one week to read the voluminous file in Circuit Court Case No. 84-25641 CT. Mr. Luber's grievance counsel wrote The Florida Bar requesting a one-month's extension, stating:

> "The reason for this request is that the file in this matter is extremely voluminous and it will take me at least two weeks to go through this material.".

In setting up the meeting with Ms. Sidman, Ms. Marger represented that she had spent 10 hours reading the files and that Ms. Marger was fully familiar with the facts; but later, at the May 26, 1988 meeting, Ms. Marger changed the time she had so spent to 8 hours.

Ms. Sidman requested the Committee to

set up another meeting and to provide her with the assistance of a Vietnamese interpreter in order that she could communicate and understand the questions being asked of her, and for the Committee to conduct the requisite investigation of her grievance matter. The Committee did not respond to her request. Thereafter, the Committee allowed Ms. Marger to render her investigatory report, as well as to participate in the Committee's meeting on this gievance matter.

At 3:45 P.M., on June 6, 1988, the Committee's Chairman, E. Hugh Chappell, Jr., Esq. was notified via his confidential secretary Sandy of Ms. Sidman's June 6, 1988 motion for leave to intervene before the Supreme Court of Florida and Sandy stated she would so inform Mr. Chappell that afternoon.

In the first numbered paragraph of her

June 6, 1988 motion before the Supreme Court of Florida for leave to intervene, Petitioner set forth:

> "1. HUE KIM SIDMAN is the Complaining Party with respect to the grievance complaints filed with the Complainant against the Respondent; and moves for leave to intervene on the grounds that her federal constitutional due process rights have been denied and are being denied.".

## ARGUMENT

### THE SUPREME COURT OF FLORIDA DEPRIVED THE PETITIONER OF HER FOURTEENTH AMENDMENT RIGHTS BY SUMMARILY DENYING HER MOTION FOR LEAVE TO INTERVENE

Rule 3-3.4. of the Rules Regulating the Florida Bar provides:

> "3-3.4. Grievance committees
>
> "(c) Membership, appointment, and eligibility.
>
> "No member of a grievance committee shall perform any grievance committee function when that member
>
> "(4) Is prejudiced or biased toward either the complainant or the respondent."

In view of the fact that Ms. Sidman set forth, in her June 6, 1988 motion

for leave to intervene, her allegations of Ms. Marger's misconduct and partiality in favor of Mr. Luber, and which allegations were not denied, the Supreme Court of Florida failed to carry out its Fourteenth Amendment obligation to remove Ms. Marger from the Committee.

The function of a grievance committee is of a judicial nature. Matter of Belanger, 426 N.Y.S. 2d 140, established the inherent right and power of a court to intervene at any time during a proceeding to remove a person functioning in a judicial or quasi-judicial capacity for reason of such person's misconduct, or probable partiality, on the application at any time of an aggrieved party.

Unlike the grievance machinery established by the Supreme Court of Michigan, a complaining witness in a grievance matter in the State of Florida has no right to seek relief from a grievance

committee's failure to conduct the requisite investigation by compelling such committee to set forth in full the investigatory steps taken and the reports of investigators or findings of fact, and, in the event of abuse of discretion, to compel the convening of a formal hearing on the grievance charges. See, Leitman v. State Bar Grievance Board, 38 Mich. 596, 198 N.W. 2d 313.

Rule 3-7.3. of the Rules Regulating the Florida Bar provides:

> "3-7.3. Grievance committee procedures
>
> "(b) Investigation. A grievance committee is required to consider all charges of misconduct forwarded to the committee by staff counsel whether based upon a written complaint or not.".

In view of the fact that Ms. Sidman set forth in her June 6, 1988 motion for leave to intervene her allegations of the Committee's failure to conduct the requisite investigation, enjoined upon

it by Rule 3-7.3.(b), as quoted above, and Ms. Sidman's allegations were not denied, the Supreme Court of Florida failed to carry out its Fourteenth Amendment obligation to compel the Committee to conduct the requisite investigation with respect to Ms. Sidman's grievance charges against the Respondent Luber.

In view of the fact that Ms. Sidman set forth in complete detail, in her June 6, 1988 motion for leave to intervene, her allegations of her inability to either communicate in the English language or to understand the English language, let alone legalese, and Ms. Sidman's said allegations were not denied, the Supreme Court of Florida failed to carry out its Fourteenth Amendment obligation to compel the Committee to set up another meeting with Ms. Sidman and to provide her the assistance of a

Vietnamese interpreter in order that she will be able to understand questions asked of her, her answers to such questions will be responsive and her questions to the Committee can be understood. See, U.S. v. Valdivieso, 486 F. 2d 545, cer. den. 94 S. Ct. 1994, 40 L. Ed. 2d 559.

## CONCLUSION

For all of the foregoing reasons, a writ of certiorari should issue to review the June 9, 1988 order of the Supreme Court of Florida.

Respectfully submitted,

WALTER F. WESSENDORF, JR.
P.O. Box 15846
Crystal City Station
Arlington, Virginia 22215
(703) 892-0110

Attorney for Petitioner

**APPENDIX A**

**Petitioner's June 6, 1988 motion before the Supreme Court of Florida for leave to intervene**

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,

Complainant,

V.

CONFIDENTIAL
FILE NO.87-27,341(17H)

MITCHELL B. LUBER,

Respondent.

MOTION FOR LEAVE TO INTERVENE, FOR AN ORDER TO SHOW CAUSE DIRECTED TO COMPLAINT'S JUDICIAL CIRCUIT GRIEVANCE COMMITTEE 17H, AND TO STAY ALL PROCEEDINGS

The Complaining Party, HUE KIM SIDMAN, moves for the following relief, to wit: for an Order of this Court granting her permission to intervene, for an Order to Show Cause directed to the Complainant's Judicial Circuit Grievance Committee 17H, and to stay all proceedings, and states as follows:

1. HUE KIM SIDMAN is the Complaining Party with respect to the grievance complaints filed with the Complainant against the Respondent; and moves for

leave to intervene on the grounds that her federal constitutional due process rights have been denied and are being denied.

2. Annexed hereto, marked Exhibit A and made a part hereof is a true and correct copy of the 3/18/88 letter, sent by the Complainant's Ft. Lauderdale Office Branch Staff Counsel Needelman to Ms. Sidman, informing Ms. Sidman that her grievance complaint against the Respondent was being forwarded for investigation to E. HUGH CHAPPELL, JR., ESQ., the Chairman of Complainant's Judicial Circuit Grievance Committee 17H.

3. Annexed hereto, marked Exhibit B and made a part hereof is a true and correct copy of the unsigned 5/4/88 NOTICE, sent by Mr. Chappell to Ms. Sidman, informing her that her grievance complaint against the Respondent was assigned for investigation to the Commit-

tee's member DIANE MARGER, ESQ.

4. Annexed hereto, marked Exhibit C and made a part hereof is a true and correct copy of Investigating Member Marger's 5/12/88 letter sent to Ms. Sidman, informing Ms. Sidman that Ms. Marger had "... read each and every document in the file." and requested Ms. Sidman to set up an appointment with Ms. Marger vis-a-vis Ms. Sidman's grievance complaint against the Respondent.

5. In the telephone conference with Ms. Marger setting up such appointment, Ms. Marger represented that she had spent 10 hours reading Complainant's entire file and the complete 17th judicial circuit court case file [this was not true because Ms. Marger inquired whether Ms. Sidman could provide copies of documents missing from the circuit court case file] and that she was entirely familiar with same. A 5/26/88 meeting of

Ms. Sidman and Ms. Marger was arranged for 10:00 AM at Ms. Marger's Ft. Lauderdale law office.

6. In contrast, at the 5/26/88 meeting, Ms. Marger changed the number of hours from 10 to 8 hours she had spent reading the files but still represented that she was fully familiar with the facts. However, Ms. Marger was unaware that Ms. Sidman's attorney had written Branch Staff Counsel Needelman on October 2, 1987, to wit:

"... pending full-fledged discovery and completion thereof in connection with Sidman v. Sidman, I suggest that you put Hue Kim Sidman's complaint against Mr. Luber on the back burner.".

It took Ms. Sidman's attorney one week to read the voluminous 17th Judicial Circuit Court Case No. 84-25641. Respondent's attorney had similar problems. On April 30, 1987, Respondent's

attorney wrote Branch Staff Counsel Needelman for an extension of time to June 1, 1987 to respond, stating:

"The reason for this request is that the file in this matter is extremely voluminous and it will take me at least two weeks to go through this material.".

On May 4, 1987, Branch Staff Counsel granted the requested extension.

Rule 3-7.3 of the RULES REGULATING THE FLORIDA BAR provide:

> "(b) Investigation. A grievance committee is required to consider all charges of misconduct forwarded to the committee by staff counsel whether based upon a written complaint or not.
>
> "(e) Counsel and investigators. Upon request of a grievance committee, staff counsel may appoint a bar counsel or an investigator to assist the committee in an investigation. Staff counsel shall assist each grievance committee in carrying out its investigative and administrative duties and shall prepare status reports for the committee, notify complainants and repondents of committee actions as appropriate, and prepare all reports reflecting committee findings of probable cause, no probable cause, recom-

> mended discipline for minor misconduct, and adminsishments after no probable cause findings.".

From the foregoing and from further facts to be set forth, it will appear that Complainant's Judicial Circuit Grievance Committee 17H has been engaged in paper shuffling and has not and is not discharging the mandatory duty imposed upon it by conducting the requisite investigation.

7. Ms. Sidman happens to be a very beautiful woman. From the personal and uncalled for remarks which Ms. Marger made to Ms. Sidman at the 5/26/88 meeting with respect to Ms. Sidman's beauty, from the uncalled for remarks made by Ms. Marger about the Florida judiciary, as well as the biased remarks Ms. Marger made favoring the Respondent, conclusively established were Ms. Marger's bias and prejudice against Ms. Sidman, and Ms. Marger's lack of impartiality, man-

dating that Ms. Marger not be allowed to perform any grievance committee function, as provided for in Rule 3-3.4., (c), (4).

8. The attorney who initially represented Ms. Sidman in her 17th Judicial Circuit Court divorce case (i.e., Sidman v. Sidman, Case No. 84-25641 CT) wrote Complainant, informing it:

"Hue Kim Sidman is of Vietnamese descent. Her English is poor and it seemed to me she had a hard time understanding the legal process.".

From Investigating Member Marger's own personal and direct observations of Ms. Sidman at their 5/26/88 meeting, from Ms. Sidman's broken-English questions asked of Ms. Marger, and from Ms. Marger's confusing and non-responsive answers in broken English to Ms. Marger's questions, it should have been quite obvious to Ms. Marger that Ms. Sidman has

extreme difficulty in understanding the English language, let alone expressing herself in the English language; and that Ms. Sidman's difficulties are compounded when legal questions are propounded to Ms. Sidman. Fundamental federal constitutional due process mandates that the Committee reschedule another meeting with Ms. Sidman and provide a qualified interpreter so that Ms. Sidman can adequately understand and participate in the proceedings. See, U.S. v. Valdivieso, 486 F 2d 545, cer. den. 94 S Ct 1994, 40 L Ed 2d 559.

9. Annexed hereto, marked Exhibit D and made a part hereof is a true and correct copy of Ms. Sidman's 4/28/88 PETITION FOR A WRIT OF PROHIBITION pending before this Court. Annexed hereto, marked Exhibit E and made a part hereof is a true and correct copy of this Court's 5/20/88 ORDER TO SHOW CAUSE which inclu-

sively stayed all proceedings in the Fourth District Court of Appeal and in the Seventeenth Judicial Circuit Court. By inadvertent error, "fifteenth" was typed instead of Seventeenth. Respondent has not returned and refunded to Ms. Sidman $3,600 paid under protest despite the fact that such self-evident typographical error was brought to Respondent's attention and despite the fact that Respondent was requested to do so by return mail.

WHEREFORE, the Complaining Party HUE KIM SIDMAN respectfully requests that your Honors:

(1) Grant her leave to intervene;

(2) Issue an order to show cause directed to Complainant THE FLORIDA BAR and its Judicial Circuit Grievance Committee 17H to show cause why

(a) Its member Diane Marger should not be allowed to perform any grievance

committee function,

(b) It should not be compelled to conduct the requisite investigation of the subject grievance complaints against Respondent,

(c) It should not be compelled to schedule another meeting with Ms. Sidman and provide her a Vietnamese interpreter;

(3) Stay all proceedings pending the hearing and disposition of the motion;

(4) Granting Ms. Sidman such other and further relief as to your Honors may [be] just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 6th day of June 1988, to each of the following: John T. Berry, Esq., Staff Counsel, The Florida Bar, Tallahassee, FL 32301-8226; E. Hugh Chappell, Jr., Esq., Chairman, Judicial Circuit Grievance Committee 17H, 420 N.

E. 3rd Street, Ft. Lauderdale, FL 33301; and Mitchell B. Luber, Esq., 5310 N.W. 33rd Avenue, Building 1, Suite 100, Ft. Lauderdale, FL 33309.

Respectfully submitted,

WALTER F. WESSENDORF, JR.
Attorney for HUE KIM SIDMAN

* Office & P.O. Address
P.O. Box 15846
Crystal City Station
Arlington, VA 22215
Telephone (703) 892-0110

* Office & P.O. Address
P.O. Box 14694
New River Station
Ft. Lauderdale, FL 33301
Telephone (305) 764-8234

* Please copy both addresses

By: (s) Walter F.Wessendorf,Jr.
WALTER F. WESSENDORF, JR.

Exhibit A

THE FLORIDA BAR
Ft. Lauderdale Office
Cypress Financial Center
5900 North Andrews Avenue
Suite 835
Ft. Lauderdale, FL 33309
305-772-2245
305-737-4906 (West Palm Beach)
305-945-9336 (Miami)

CONFIDENTIAL March 18, 1988

Ms. Hue Kim Sidman
124 Hendricks Isle
Fort Lauderdale, Florida 33301

RE: Your complaint agsinst Mitchell B. Luber, Esquire
Our File No. 87-27,341(17H)

Dear Ms. Sidman:

Your complaint against the above-captioned attorney is being forwarded to E. Hugh Chappell, Jr., Chairman of Grievance Committee 17 "H", for investigation.

You will be hearing from him or a member of his committee in due course relative to your complaint.

Very truly yours,

(s) Jacquelyn P. Needelman
JACQUELYN P. NEEDELMAN
Branch Staff Counsel

JPN:AGM

cc: Mitchell B. Luber, Esquire
E. Hugh Chappell, Jr., Chairman
Lance J. Thibideau, Esquire

DEAR COMPLAINANT: The grievance you filed must be treated in a confidential manner, as it is a violation of the rules of the Supreme Court of Florida to reveal this information to any unauthorized person. However, you are authorized to discuss your grievance with your attorney.

P.S. to CHAIRMAN: Please have your committee investigate this matter to determine if there has been a violation of Disciplinary Rules 1-102(A)(4) & (6), 2-106, 4-101, 6-101, 7-101(A) and 7-102 (A) (5), Code of Professional Responsibility or any other rules deemed applicable.

Exhibit B

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

The Florida Bar,
Complainant,
v.
Mitchell B. Luber,
Respondent.

CONFIDENTIAL
FILE NO. 87-27,341 (17H)

NOTICE OF RECEIPT OF COMPLAINT

To Complaining Party:

Hue Kim Sidman
124 Hendricks Isle
Fort Lauderdale, Florida 33301

To Respondent:

Mitchell B. Luber, Esq.
400 Southeast 12 Street
Fort Lauderdale, Florida 33316

Receipt of a complaint on the 28th day of January, 1987, against the respondent from the complaining party is acknowledged. The complaint has been given the above case number and is hereby assigned to the following member of the committee for investigation:

Diane Marger, Esq.

1 E. Broward Blvd., 12th Floor

Fort Lauderdale, FL 33301

The respondent should contact the investigating member of the committee within ten days from the date of this notice to discuss investigation and disposition of this complaint as well as his or her rights in such proceedings.

All inquiries concerning this complaint or the rule of confidentiality should be directed to the investigating member. Under the rules of the Supreme Court of Florida, proceedings against attorneys at the grievance committee (investigatory) level are confidential. Rule 3-7.1. Violations of the confidentiality rule may be punished by contempt. This rule does not prevent the parties from discussing the matter with their personal attorneys who will then be subject to the confidentiality rule.

Dated this 4th day of May, 1988.

Chairman, Judicial Circuit Grievance Committee 17H
E. Hugh Chappell, Jr.
Enclosure to respondent (copy of complaint letter)

Copies furnished to:

1. Branch Staff Counsel, The Florida Bar
2. Designated Reviewer for the committee (optional)
3. Investigating Member (with file)

TFB Form 1
November 1986

Exhibit C

THE FLORIDA BAR

GRIEVANCE COMMITTEE FOR THE SEVENTEENTH JUDICIAL CIRCUIT

REPLY TO:

May 12, 1988

DIANE E. MARGER, ESQ.
One East Broward Boulevard
Suite 1203
Fort Lauderdale, FL 33301

Ms. Hue Kim Sidman
124 Hendricks Isle
Fort Lauderdale, Florida 33301

Re: HUE KIM SIDMAN vs. MITCHELL B.LUBER, ESQUIRE
FLORIDA BAR FILE NO. 87-27,341(17H)

Dear Ms. Sidman:

As you are aware from the notice of receipt of complaint which was mailed to you by the Florida Bar on May 4, 1988, that I am the investigating member of the Grievance Committee 17"H" that will be looking into your complaint against Mitchell Luber. I have now had the opportunity to read each and every document in the file.

If you would like to add anything to those remarks made by you in your various letters to the Bar, or if you would like to arrange an appointment to meet with me, you and your attorney, if you so desire, may set up such an appointment by contacting me at my office. I intend to complete my investigation at the earliest possible time and, in any event, will report back to the committee

during the first week of June, 1988. Therefore, if you wish to set up an appointment with me, please do so promptly.

Sincerely,

(s) Diane E. Marger
DIANE E. MARGER

DEM:sw

This correspondence is CONFIDENTIAL under Rules of the Supreme Court of Florida

Exhibit D

IN THE SUPREME COURT OF FLORIDA

FILE NO.

HUE KIM SIDMAN,

Petitioner,

vs.

THE JUDGES CONSTITUTING THE FOURTH DISTRICT COURT OF APPEAL,

Respondents.

PETITION FOR A WRIT OF PROHIBITION

To the Honorable, the Justices of the Supreme Court of Florida:

The petition of HUE KIM SIDMAN respect-

fully shows to your Honors:

That annexed hereto and made a part hereof is a true and correct copy of Petitioner's February 15, 1988 MOTION TO DISMISS APPEAL AND TO STAY ALL PROCEEDINGS (hereinafter "MOTION") which she duly served and filed with HON. CLYDE L. HEATH, Court Clerk for the Respondents, on the ground that your Petitioner's 12/23/87 rehearing motion vested exclusive jurisdiction with the trial court (Tedder, J.) unaffected by Appellant's notice of appeal subsequently filed 1/19/88 by HARRIS K. SOLOMON, ESQ.

That your Petitioner is aggrieved by Respondents' annexed April 26, 1988 order denying her said 2/15/88 MOTION.

WHEREFORE, your Petitioner prays that your Honors grant her an Order affording the following relief:

(1) Prohibiting Respondents from exercising any jurisdiction or empowerment

respecting the said 1/19/88 appeal #88-0219 other than dismissing same;

(2) Directing Respondents to dismiss said 1/19/88 appeal;

(3) Granting Petitioner such other and further relief as to your Honors may seem just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 28th day of April, 1988, to each of the following:

Hon. George W. Hersey
Chief Judge
District Court of Appeal
Fourth District
P.O. Box A
West Palm Beach, FL 33402

and

Harris K. Solomon, Esq.
Brinkley, McNerney & Morgan
2881 E. Oakland Park Blvd.
Ft. Lauderdale, FL 33306

Respectfully submitted,

WALTER F. WESSENDORF, JR.
Attorney for Petitioner
HUE KIM SIDMAN
Office & P.O. Address
P.O. Box 15846
Crystal City Station
Arlington, VA 22215
Telephone, (703) 892-0110

By:(s) Walter F. Wessendorf, Jr.
WALTER F. WESSENDORF, JR.

Please also copy the
following local address:

WALTER F. WESSENDORF, JR.
124 Hendricks Isle
Ft. Lauderdale, FL 33301
Telephone, (305) 764-8234

DISTRICT COURT OF APPEAL
FOURTH DISTRICT

CASE NO. 880219

IN RE: THE MARRIAGE OF:

DAVID SIDMAN,
Petitioner/Husband

and

HUE KIM SIDMAN,
Respondent/Wife. /

MITCHELL B. LUBER, P.A. and
MITCHELL B. LUBER, ESQ.,
Appellant,

vs.

HUE KIM SIDMAN,
Appellee. /

## MOTION TO DISMISS APPEAL AND TO STAY ALL PROCEEDINGS

The Appellee moves for the following relief, to wit: to dismiss the appeal and to stay all proceedings, and states as follows:

1. On December 23, 1987, Appellee duly served and filed her motion for rehearing of Judge Tedder's December 16, 1987 order, and which said 12/16/87 order the Appellant appealed from to this Court. The filing of Appellee's 12/23/87 rehearing motion vested exclusive jurisdiction with the trial court (Tedder, J.), and negated any jurisdiction and power in the Fourth District Court of Appeal, via Appellant's January 19, 1988 notice of appeal, other than to dismiss such appeal, and it appears that the Supreme Court of Florida has the power to prohibit the Fourth District Court of Appeal from proceeding in this case.

See, State ex rel. Owens v. Pearson, 156 So. 2d 4. Accordingly, Appellee respectfully requests the Fourth District Court of Appeal to dismiss such appeal pending before it.

2. In the event the Fourth District Court of Appeal denies Appellee such relief sought by her, Appellee respectfully requests the Fourth District Court of Appeals to stay all proceedings in order to afford Appellee a reasonable opportunity to seek prohibitory relief from the Supreme Court of Florida directed to the Fourth District Court of Appeal and pending determination by the Supreme Court of Florida of such prohibitory relief sought by Appellee.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 15th day of February, 1988, to:

Harris K. Solomon, Esq.
Brinkley, McNerney & Morgan
2881 E. Oakland Park Blvd.
Ft. Lauderdale, FL 33306

Respectfully submitted,

WALTER F. WESSENDORF, JR.
Attorney for HUE KIM SIDMAN
Office & P.O. Address
P.O. Box 15846
Crystal City Station
Arlington, VA 22215

Telephone (703) 892-0110

By: (s) Walter F. Wessendorf, Jr.
WALTER F. WESSENDORF, JR.

Please also copy the
following local address:

WALTER F. WESSENDORF, JR.
124 Hendricks Isle
Ft. Lauderdale, FL 33301

Telephone (305) 764-8234

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT, P.O. BOX A, WEST PALM BEACH, FL 33402

MITCHELL B. LUBER, P.A. and MITCHELL B. LUBER, ESQ.,

Appellant,

v. CASE NO. 88-0219

HUE KIM SIDMAN,

Appellee.

APRIL 26, 1988

BY ORDER OF THE COURT:

ORDERED that Appellee abide by Florida Rule of Appellate Procedure 9.300(a) and submit all motions to this court in accordance with that rule.

ORDERED that Appellee's January 28, 1988 Motion to Quash Appeal and for Imposition of Sanctions is denied.

ORDERED that Appellants' February 10, 1988 Motion to Strike Appellee's Motion

to Quash Appeal and Motion for Imposition of Sanctions is denied.

ORDERED that Appellee's February 19, 1988 Motion to Dismiss Appeal and Stay Proceedings is denied.

ORDERED, upon consideration of Appellants' March 23, 1988 and April 5, 1988 Motions for Extension, Appellants' initial brief shall be filed within thirty (30) days of the date of this order.

I hereby certify the foregoing is a true copy of the original court order.

(s) Clyde L. Heath
CLYDE L. HEATH,
CLERK.

cc: Harris K. Solomon, Esq.
Walter M. Wessendorf, Esq.
Hue Kim Sidman
Mitchell B. Luber, P.A.
Honorable Robert E. Lockwood,
Clerk (84-25641 CF)

cms

Exhibit E

IN THE SUPREME COURT OF FLORIDA

FRIDAY, MAY 20, 1988

HUE KIM SIDMAN,

Petitioner, ORDER TO SHOW CAUSE

vs. CASE NO. 72,356

DISTRICT COURT OF APPEAL,
FOURTH DISTRICT,

Respondent.

WHEREAS, the Court has determined that the Petition demonstrates a preliminary basis for relief, this is to command the Honorable George W. Hersey, Chief Judge, Fourth District Court of Appeal, to show cause on or before June 6, 1988, why the Petition should not be granted. Petitioner may serve her response on or before June 16, 1988.

IT IS FURTHER ORDERED that all proceedings in the District Court of Ap-

peal, Fourth District, and in the Circuit Court of the Fifteenth Judicial Circuit of Florida, are hereby stayed pending disposition of the Petition for Writ of Prohibition filed herein.

/s/ Sid J. White
Clerk of the Supreme Court of Florida.

A True Copy

TEST

(seal)

(s) Sid J. White
Sid J. White
Clerk Supreme Court.

sg
cc: Honorable George W. Hersey
Honorable John B. Dunkle
Honorable Clyde L. Heath
Walter F. Wessendorf, Jr., Esquire
(Arlington & Ft.Lauderdale Address)
Harris K. Solomon, Esquire
Mitchell B. Luber, Esquire

FOOTNOTE: Upon Petitioner's subsequent June 10, 1988 motion therefor and without objection by Florida's Attorney General, the second decretal provision of the Court's May 20, 1988 Order was corrected to read Seventeenth instead of "Fifteenth Judicial Circuit" by the Court's June 14, 1988 Corrected Order.

**APPENDIX B**

**Order of the Supreme Court of Florida,**

**entered June 9, 1988,**

**denying Petitioner's June 6, 1988**

**motion for leave to intervene**

Supreme Court of Florida

THURSDAY, JUNE 9, 1988

| | | |
|---|---|---|
| THE FLORIDA BAR, | * | |
| | * | |
| Complainant, | * | |
| | * | |
| V. | * | CASE NO. 72,539 |
| | * | |
| MITCHELL B. LUBER, | * | |
| | * | |
| Respondent. | * | |
| | * | |
| * * * * * * * * * * * | * | |

C O N F I D E N T I A L

Upon consideration of the Motion for Leave to Intervene, for an Order to Show Cause Directed to Complaint's Judicial Circuit Grievance Committee 17H and to Stay All Proceedings filed in the above cause by attorney for HUE KIM SIDMAN,

IT IS ORDERED that said Motion be and the same is hereby denied.

A True Copy

TEST:
.(Seal)

(s) Sid J. White
Sid J. White
Clerk Supreme Court.

TC
cc: Walter F. Wessendorf, Jr., Esquire
(two locations)
John T. Berry, Esquire
E. Hugh Chappell, Jr., Esquire
Mitchell B. Luber, Esquire